

**DECLARATION AND POWER OF ATTORNEY**  
**Utility Application**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **METABOLIC SELECTION METHODS** the specification of which

(Check One)

☒  
☐

is attached hereto OR

was filed on \_\_\_\_\_ as United States Application Serial No. \_\_\_\_\_ or PCT International Application No. \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment(s) referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Date of Filing	Priority Claimed	
			Yes	No

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Number	Parent Filing Date	Status-Patented, Pending or Abandoned

**POWER OF ATTORNEY:** As a named inventor, I hereby appoint as my attorneys and/or agents, with full power of substitution and revocation, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

Roland N. Smoot, Reg. No. 18,718; Conrad R. Solum, Jr. Reg. No. 20,467; James W. Geriak, Reg. No. 20,233; Robert M. Taylor, Jr., Reg. No. 19,848; Samuel B. Stone, Reg. No. 19,297; Douglas E. Olson, Reg. No. 22,798; Robert E. Lyon, Reg. No. 24,171; Robert C. Weiss, Reg. No. 24,939; Richard E. Lyon, Jr., Reg. No. 26,300; John D. McConaghy, Reg. No. 26,773; William C. Steffin, Reg. No. 26,811; Coe A. Bloomberg, Reg. No. 26,605; J. Donald McCarthy, Reg. No. 25,119; John M. Benassi, Reg. No. 27,483; James H. Shalek, Reg. No. 29,749; Allan W. Jansen, Reg. No. 29,035; Robert W. Dickerson, Reg. No. 29,914; Roy L. Anderson, Reg. No. 30,240; David B. Murphy, Reg. No. 31,125; James C. Brooks, Reg. No. 29,898; Jeffrey M. Olson, Reg. No. 30,790; Steven D. Hemminger, Reg. No. 30,755; Jerrold B. Reilly, Reg. No. 32,293; Paul H. Meier, Reg. No. 32,274; John A. Rafter, Jr., Reg. No. 31,653; Kenneth H. Ohriner, Reg. No. 31,646; Mary S. Consalvi, Reg. No. 32,212; Lois M. Kwasigroch, Reg. No. 35,579; Lawrence R. LaPorte, Reg. No. 38,948; Robert C. Laurenson, Reg. No. 34,206; Bradford J. Duft, Reg. No. 32,219; Suzanne L. Biggs, Reg. No. 30,158; Richard J. Warburg, Reg. No. 32,327; John M. Johnson, Reg. No. 33,334; Troy M. Schmelzer, Reg. No. 36,667; Daniel N. Yannuzzi, Reg. No. 36,727; Jessica R. Wolff, Reg. No. 37,261; Douglas C. Murdock, Reg. No. 37,549; Sheldon O. Heber, Reg. No. 38,179; Jeffrey W. Guise, Reg. No. 34,613; F.T. Alexandra Mahaney, Reg. No. 37,668; Charles S. Berkman, Reg. No. 38,077; Anthony C. Chen, Reg. No. 38,673; Edward M. Jordan, Reg. No. 40,666; John C. Kappos, Reg. No. 37,861; Howard N. Wisnia, Reg. No. 37,502; Stephen S. Korniczky, Reg. No. 34,853; Jonathan T. Losk, Reg. No. 39,755; Theodore S. Maceiko, Reg. No. 35,593; Hope E. Melville, Reg. No. 34,874; Jeffrey A. Miller, Reg. No. 35,874; Kurt T. Mulville, Reg. No. 37,194; Clarke W. Neumann, Reg. No. 39,789; Vicki Norton, Reg. No. 40,745; Keith Kind, Reg. No. 42,735; Kenneth S. Roberts, Reg. No. 38,283; Thomas R. Rouse, Reg. No. 40,793; James K. Sakaguchi, Reg. No. 41,285; James K. Sakaguchi, Reg. No. 41,285; Carol A. Schneider, Reg. No. 34,923; Gary H. Silverstein, Reg. No. 39,372; Sheryl R. Silverstein, Reg. No. 40,812; Brent D. Sokol, Reg. No. 38,621; Jeffrey D. Tekanic, Reg. No. 36,031; Christopher A. Vanderlaan, Reg. No. 37,747; David E. Wang, Reg. No. 38,358; Lisa Ward Karmelich, Reg. No. 41,421; Michael J. Wise, Reg. No. 34,047; Wesley Ames, Reg. No. 40,893; Charles Balgenorth, Reg. No. 37,586; Thomas J. Brindisi, Reg. No. 40,348; James P. Brogan, Reg. No. 35,833; David T. Burse, Reg. No. 37,104; Bruce G. Chapman, Reg. No. 33,846; Farshad Farjani, Reg. No. 41,014; Charles C. Fowler, Reg. No. 39,675; and Corrine M. Freeman, Reg. No. 37,625.; of LYON & LYON, 633 West Fifth Street, Suite 4700, Los Angeles, California 90071-2066 telephone (619) 552-8400.

Send Correspondence to: Richard J. Warburg	LYON & LYON LLP 633 W Fifth St., Suite 4700 Los Angeles, CA 90071	Direct Telephone calls to: Richard J. Warburg
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Residence, post office address, citizenship and signature of inventor(s) set forth beginning on next page.

Residence, post office address, citizenship and signature of inventor(s) set forth beginning on next page.

	FULL NAME OF INVENTOR	FIRST Name James	MIDDLE Initial	LAST Name Hoch	
201	RESIDENCE & CITIZENSHIP	City La Jolla	State or Foreign Country California	Country of Citizenship USA	
	POST OFFICE ADDRESS	1054 Havenhurst Drive	City La Jolla	State or Country California	Zip Code 92037
	FULL NAME OF INVENTOR	FIRST Name Veronique	MIDDLE Initial	LAST Name Dartois	
202	RESIDENCE & CITIZENSHIP	City San Diego	State or Foreign Country California	Country of Citizenship Belgium	
	POST OFFICE ADDRESS	3957 Nobel Drive Apt. 233	City San Diego	State or Country California	Zip Code 92122
	FULL NAME OF INVENTOR	FIRST Name	MIDDLE Initial	LAST Name	
203	RESIDENCE & CITIZENSHIP	City	State or Foreign Country	Country of Citizenship	
	POST OFFICE ADDRESS		City	State or Country	Zip Code
	FULL NAME OF INVENTOR	FIRST Name	MIDDLE Initial	LAST Name	
204	RESIDENCE & CITIZENSHIP	City	State or Foreign Country	Country of Citizenship	
	POST OFFICE ADDRESS		City	State or Country	Zip Code
	FULL NAME OF INVENTOR	FIRST Name	MIDDLE Initial	LAST Name	
205	RESIDENCE & CITIZENSHIP	City	State or Foreign Country	Country of Citizenship	
	POST OFFICE ADDRESS		City	State or Country	Zip Code
	FULL NAME OF INVENTOR	FIRST Name	MIDDLE Initial	LAST Name	
206	RESIDENCE & CITIZENSHIP	City	State or Foreign Country	Country of Citizenship	
	POST OFFICE ADDRESS		City	State or Country	Zip Code

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code §1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature of Inventor	201
Date	10-12-98
Signature of Inventor	202
Date	10-10-98
Signature of Inventor	203
Date	

Signature of Inventor	204
Date	
Signature of Inventor	205
Date	
Signature of Inventor	206
Date	

(Signatures should conform to names as presented at 201 et seq. above.)

Applicant or Patentee: James Hoch et al.  
 Serial or Patent No. : 09/172,952  
 Filed or Issued: October 14, 1998  
 For: METABOLIC SELECTION METHODS

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS (37 CFR 1.9(f) AND 1.27(c)) – SMALL BUSINESS CONCERN**

I hereby declare that I am

- ☐ the owner of the small business concern identified below:
- ☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: MicroGenomics  
 ADDRESS OF CONCERN: 11211 Sorrento Valley Road  
 San Diego, CA 92121

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-part or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled

METABOLIC SELECTION METHODS

by inventor(s) James Hoch and Veronique Dartois

described in

- ☐ the specification filed herewith
- ☒ the application serial no. 09/172,952, filed October 14, 1998.
- ☐ patent no. \_\_\_\_\_, issued \_\_\_\_\_.

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37 CFR 1.9(c) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

☐ Individual

☐ Small Business Concern

☐ Nonprofit Organization

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

☐ Individual

☐ Small Business Concern

☐ Nonprofit Organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Veronique Dartois

TITLE OF PERSON SIGNING Senior Scientist

ADDRESS OF PERSON SIGNING 11211 Sorrento Valley Road, San Diego, CA 92121

SIGNATURE *V. Dartois* DATE 04.05.00

006240 "06/2/00"

# RECORDATION FORM COVER SHEET PATENTS ONLY

Docket No. 234/191

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies):</p> <p>JAMES HOCH VERONIQUE DARTOIS</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party:</p> <p>Name: <u>MICROGENOMICS, INC.</u></p> <p>Street Address <u>11211 Sorrento Valley Road</u></p> <p>City: <u>San Diego</u> State: <u>California</u> Zip: <u>92121</u></p> <p>Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input checked="" type="checkbox"/> Assignment</p> <p>Execution Date: <u>6 October 1999</u></p>	



4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No(s). <u>09/172,952</u>	B. Patent No(s).:
------------------------------------------------	-------------------

Additional numbers attached? ☐ Yes ☒ No

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Richard J. Warburg</u></p> <p>Internal Address: <u>LYON &amp; LYON LLP</u> <u>633 West Fifth Street, Suite 4700</u> <u>Los Angeles, CA 90071-2066</u></p>	<p>6. Total number of applications and patents involved: <u>1</u></p> <p>7. Total fee (37 CFR 3.41): \$ <u>40.00</u></p> <p><input checked="" type="checkbox"/> Enclosed</p> <p><input checked="" type="checkbox"/> Charge this Deposit Account if any additional fee is required</p> <p>8. Deposit Account Number: <u>12-2475</u></p>
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## DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Wesley B. Ames Date: 7 October 1999

Wesley B. Ames, Reg No. 40,893

Total number of pages including cover sheet: 4

OMB No. 0651-0011 (exp. 4/94)

### Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

**Commissioner of Patents and Trademarks**  
**Box Assignments**  
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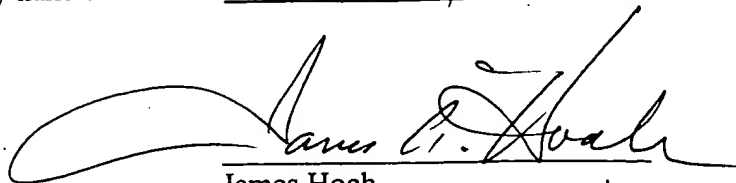
Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project, (0651-0011), Washington, D.C. 20503

### ASSIGNMENT

For valuable consideration, we, JAMES HOCH, of San Diego, California and a citizen of USA and VERONIQUE DARTOIS, of San Diego, California and a citizen of BELGIUM (hereinafter referred to as "ASSIGNORS"), hereby assign to MICROGENOMICS, INC. a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having its principal place of business at 11211 Sorrento Valley Road, San Diego, California 92121 (hereinafter referred to as "ASSIGNEE"), the entire right, title and interest throughout the world in the invention and improvements which are the subject of an application for United States Patent filed October 14, 1998, U.S. Serial No. 09/172,952, and related applications and patents, entitled METABOLIC SELECTION METHODS, this assignment including said application, any and all United States and foreign patents granted for any of said inventions or improvements, including all divisions, continuations, reissues, continuations-in-part and extensions thereof, and the right to claim priority based on the filing date of said application and based on the filing date of any provisional application of which said application claims the benefit under the International Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the European Patent Convention, and all other treaties of like purposes; and we authorize the Assignee to apply in all countries in our names or in its own name for patents and like rights of exclusion and for inventor's certificates for said inventions and improvements; and we agree for ourselves and our heirs, legal representatives and assigns, without further compensation, upon request to perform such lawful acts, to promptly provide Assignee with all pertinent facts and documents relating to said invention or application as may be known and accessible to us, to testify in any interference or litigation related to said invention or application and to sign such further applications, assignments, Preliminary Statements and other lawful documents as the Assignee may reasonably request to effectuate fully this Assignment.

The Assignors hereby covenant that no assignment, sale, agreement, or encumbrance has been or will be made or entered into which would conflict with this Agreement.

IN WITNESS WHEREOF, I hereto set my hand and seal at La Jolla, CA, this  
6th day of October, 1999.

  
James Hoch

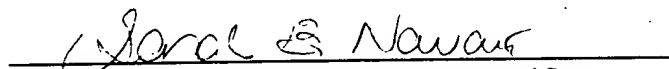
STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SAN DIEGO )

On Oct 6, 1999 before me, Sarah B. Navarro,  
personally appeared James Hoch,

☐ personally known to me -- OR -- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(~~ies~~), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



  
Notary Public in and for said County and State



IN WITNESS WHEREOF, I hereto set my hand and seal at La Jolla, CA, this  
5<sup>th</sup> day of October, 1999.

V. Dartois

Veronique Dartois

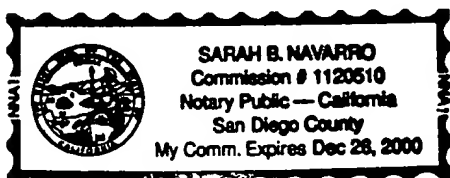
STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SAN DIEGO )

On Oct. 6 1999 before me, Sarah B Navarro,

personally appeared Veronique Dartois,

☐ personally known to me -- OR -- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Sarah B Navarro  
Notary Public in and for said County and State